

THE
FLORIDA FEDERATION
of
WOMEN'S CLUBS

President
MRS. MEADE A. LOVE
Quincy, Florida

Legal Status
of Women
in Florida



Chairman of Legislation
MRS. WILLIAM L. WILSON
Jacksonville, Florida

March, 1934

A RESUME OF THE LAWS AFFECTING THE LEGAL STATUS AND PROPERTY RIGHTS OF WOMEN IN FLORIDA

Prepared by
CLIFFORD T. INGLIS
of the
Jacksonville, Florida Bar

The legal rights of single women in the State of Florida are substantially the same as those of single men.

Florida has adopted the common law, subject to constitutional, statutory and judicial changes, thus leaving married women under certain restrictions which have been completely abolished in other states.

Marriage

Parties related by lineal consanguinity are prohibited from marriage with each other in this State. Miscegenetic marriages between white persons and persons having one-eighth or more negro blood are prohibited.

The sworn consent of the parents of parties under the age of twenty-one is required before the issuance of a marriage license.

Marriage licenses are issued and marriage records are kept by the County Judge of the county of the woman's residence.

Marriage ceremonies may be performed by judges, justices of the peace, notaries public or ordained ministers of the gospel.

Florida recognizes common law marriages.

Free Dealer Statutes

A married woman may, upon petition to the Circuit Court of the county of her residence and upon a showing of her competency, be made a free dealer, thus removing her disabilities of coverture so that she can sue and be sued, contract and be contracted with, transfer or incumber her own separate property without her husband's consent as fully as though she were unmarried.

Care and Management of Wife's Property

The property of the wife remains in the care and management of the husband but he can not charge for such care and management nor can she sue him for the rent, hire, issues, proceeds or profits of such property.

Unacc

Separate Property

All property of a wife owned by her before marriage or lawfully acquired thereafter, is her separate property and is not liable for the debts of her husband without her consent in writing, given with the formality of a conveyance of the property.

The Florida Constitution provides that:

"All property, real and personal, of a wife owned by her before marriage, or lawfully acquired afterward by gift, devise, bequest, descent, or purchase, shall be her separate property, and the same shall not be liable for the debts of her husband without her consent given by some instrument in writing executed according to the law respecting conveyances by married women.

"A married woman's separate real or personal property may be charged in equity and sold, or the uses, rents and profits thereof sequestrated for the purchase money thereof; or for money or thing due upon any agreement made by her in writing for the benefit of her separate property; or for the price of any property purchased by her, or for labor and material used with her knowledge or assent in the construction of buildings, or repairs, or improvements upon her property, or for agricultural or other labor bestowed thereon, with her knowledge and consent."

A married woman's wages and earnings acquired by her in any employment separate from her husband are her separate property and subject to her own disposal. She is entitled to sue for and recover the same as though she were a single woman.

Acknowledgments

The signature and execution of a deed and certain other instruments by a single woman may be acknowledged before a notary public or other officer authorized to administer oaths in the same manner as that of a single man.

A married woman must acknowledge the execution of a deed to her own or her husband's real estate before a notary public or other officer, separate and apart from her husband and must acknowledge the instrument to have been executed freely and voluntarily and without any fear, apprehension, constraint or compulsion of and from her husband. A married woman who has become a free dealer may transfer her own separate property as though she were unmarried.

Estates By Entireties

Where land is conveyed to both husband and wife, an estate by entireties is created, and if there is a unity of estate, possession and control, the land can not, except in cases of fraud, be sold for the separate debts of either, nor can the estate be conveyed except by joint action of the spouses. Upon the death of either spouse, the entire estate goes to the survivor.

Dower

Broadly speaking, the right of dower is an interest which a wife has in the property of her husband during coverture, which right vests a property interest in her upon the death of the husband.

The probate act of 1933, carefully prepared by a committee from the Florida State Bar Association, makes drastic changes in the dower right of widows in Florida, providing:

"Whenever the widow of any decedent shall not be satisfied with the portion of the estate of her husband to which she is entitled under the law of descent and distribution or under the will of her said husband, or both, she may elect, in the manner hereinafter provided, to take dower, which dower shall be one-third part in fee simple of the real property and one-third part absolutely of the personal property owned by her husband at the time of his death or had before conveyed whereof she had not relinquished her right of dower as provided by law, free from all liability for the debts of the decedent, all estate and inheritance taxes and all costs, charges and expenses of administration; provided, however, that nothing herein contained shall be construed as impairing the validity of the lien of any duly recorded mortgage or the lien of any person in possession of personal property. The homestead shall not be included in the property subject to dower but shall descend as otherwise provided in this Act for the descent of homesteads."

The wife may relinquish her dower interest by various methods but, if not previously released or relinquished, she is entitled to claim a one-third absolute interest in the real and personal property owned by her husband at the time of his death. This interest is free and clear of liability for debts of the decedent.

This dower interest must, however, be asserted within nine months after the publication of first notice to creditors of her husband's estate and if not so asserted, her dower right ceases to exist and she

takes only such property as is otherwise allowed her by law, by her husband's will, or by the laws of descent and distribution. Obviously, since other property rights accruing to her are frequently subject to liability for the debts of her husband and dower is not, it behooves widows to seek the advice of counsel as to whether and in what manner dower should be taken.

Under the Probate Act of 1933, the widow is entitled to a life estate in the homestead with vested remainder to the lineal descendants in being at the time of the death of her husband. She does not, however, have a right of dower in the homestead if the husband is survived by children.

If the husband is absent for a period of seven years or more from his place of last domicile, a presumption of his death arises and, upon this presumption, the Courts will assign dower to the wife.

In addition to the widow's dower or inheritance, she is entitled to receive and retain all wearing apparel and such household goods and farming utensils, provisions and clothing as may be necessary for her maintenance and that of the family, to be set aside on petition to the county judge, special regard being had for the ability of the widow and children to provide for and maintain themselves.

Homesteads and Exemptions

A homestead to the extent of one hundred sixty acres of land, or one-half of one acre within the limits of any incorporated city or town, owned by the head of a family residing in this State, together with one thousand dollars worth of personal property, and the improvements on the real estate, are exempt from forced sale under process of any Court, and the real estate may not be conveyed without the joint consent of the husband and wife, when that relationship exists.

Also exempt from process is money due the head of a family for personal labor or service, proceeds of certain insurance and proceeds arising for injury or death in certain hazardous occupations.

Property to the value of five hundred dollars of every widow that has a family dependent on her for support and of every person who is a bona fide resident of the State and has lost a limb or been disabled in war or by misfortune, is exempt from taxation.

Descent and Distribution

Whenever a person dies without a will, the real and personal property of his estate, after payment of debts and expenses of administration, descends as follows: "1. To the surviving spouse and lineal descendants, the surviving spouse taking the same as if he or she were one of the children. 2. If there be no lineal descendants, to the surviving spouse. 3. If there be no surviving spouse, to the lineal descendants. 4. And, if there be none of the foregoing, to the father and mother equally, or to the survivor of them. 5. And, if there be none of the foregoing, to the brothers and sisters and the descendants of deceased brothers and sisters."

The statutes make specific and detailed provision for the distribution of the estate among certain other kindred, if there be none of the named classes surviving; and the decedent failing to leave kindred surviving, to the kindred of the deceased spouse. Should there be no will and none of the foregoing, the estate escheats to the State.

Contractual Liability

A married woman who has not been made a free dealer is not competent to enter into contracts so as to give a personal judgment against her. Her promissory note is void. She can not be a member of a partnership so as to make herself personally liable for its debts. She may, however, along with her husband, make a valid mortgage of her own property to secure the note of her husband.

Tort Liability

A married woman may be personally liable for her wrongful civil acts or actual torts, when unconnected with a contractual undertaking, and she may be sued jointly with her husband in respect to such acts, or separately if she survives him. A husband is liable for the pure torts of his wife, such as, for example, injury to another resulting from the negligent operation of an automobile, and he may be sued jointly with her for such injuries.

Civil Rights

A woman is not because of her sex disqualified from voting or holding public office. She may not, however, serve on grand or petit juries.

Relations to Corporations

A married woman may be an officer, incorporator or director of a corporation. Except as to limitations upon its transfer, she may own stock in corporations under her own name as her separate property.

Ante-Nuptial Debts of Wife

The husband is not liable for the debts of the wife contracted before marriage, but the property of the wife is subject to such debts.

Divorce

Except upon the ground of adultery, one year's residence in this State is required before divorce proceedings can be instituted here. The grounds may be stated as: 1. Relation of the parties within degrees prohibited by law. 2. Natural impotence. 3. Adultery. 4. Extreme cruelty. 5. Habitual indulgence in a violent and ungovernable temper. 6. Habitual intemperance. 7. Willful, obstinate and continued desertion for one year. 8. Divorce in any other state or country. 9. The existence of a living spouse by either party at the time of the marriage.

Awarding custody of children and granting of alimony are matters to be decided by the Court as may seem equitable, depending on the special circumstances of each case.

Separate Maintenance

If any husband having ability to maintain or contribute to the maintenance of his wife or minor children shall fail to do so, the wife, living with him or living apart from him through his fault, may obtain such maintenance or contribution through the courts.

Desertion and Nonsupport

A man is prohibited from deserting his wife or children and from withholding from them the means of support. Neither may a mother desert her children or withhold from them the means of support when she is required by law to care for and support them. Both offenses constitute felonies.

Before or after conviction, the defendants may give bond conditioned upon proper provision of necessary home, food, clothing and care. However, where there exist grounds for divorce, the husband may not be prosecuted for the desertion or nonsupport of his wife.

Infants

Both sexes attain majority in Florida at the age of twenty-one years, at which time they come into their full rights of citizenship and property. Upon a showing of competency, the circuit judge of the county of the residence of an infant may remove the disabilities of non-age of a minor over the age of eighteen years. Disabilities of non-age are also removed by marriage.

Guardianship

The mother jointly with the father are the natural guardians of their children during infancy. However, the mother and father may appoint guardians for their children during any part of infancy by deed of writing attested by two witnesses or by last will and testament, giving such guardians the same powers as in cases of other guardians.

Upon the death of either natural parent, the sole guardianship of the child or children of such parents passes to the surviving parent and vests in him or her solely, even though the survivor thereafter remarries. The surviving father or mother may appoint guardians for his or her children by deed in writing or will as aforesaid.

The natural guardians have the right to collect, receive, manage and dispose of any personal property accruing to the benefit of the child during infancy where the amount does not exceed five hundred dollars, provided that in the event the mother or father remarries after the death of the other parent, he or she must obtain an order of the court allowing them to manage such property.

The county judge is required to take good security of all guardians appointed by him for the estates of orphans, and such guardians are required to take an oath that they will well and truly perform their duties.

A guardian is required to file a complete inventory and schedule of all property of his ward in his hands and render an account as required by law.

The investing of money, the purchasing, renting, selling, cultivating and general management of the real estate of an infant by his guardian can only be authorized by an order of court, and without such order, the guardian will be liable on his bond for any loss resulting to his ward.

Guardians may be appointed for persons adjudged insane or lunatic, domiciled in this State, and such guardians have substantially the same powers and duties over and concerning the persons and property of such insane persons and are subject to the same provisions of law as the guardians of infants.

Adoption

After notice and petition, the courts may allow the adoption of any child by any person who may apply therefor. Such adoption does not interfere with the property rights of the child adopted and, in law, makes the child adopted the child and heir-at-law of the foster parent. The adopted child inherits, as well, from the estate of its blood parents, but such blood parents do not inherit from the adopted child.

Legitimacy of Children

If the mother of any illegitimate child and the reputed father shall at any time after its birth intermarry, the child shall in all respects be deemed and held legitimate.

No decree of divorce shall render illegitimate a child born during the marriage, except in cases where a divorce is granted upon the ground that either parent had a husband or wife living at the time of the marriage; in which cases the marriage shall be invalid from the beginning.

Every illegitimate child is an heir of its mother and inherits from her and also from the person who acknowledges in writing, signed in the presence of a competent witness, that he is the father of the child. However, an illegitimate child does not inherit any part of the estate of its parents' kindred, either lineal or collateral, unless the parents shall have later married each other.

A testator may provide by his will for his illegitimate offspring in being at the time the will is executed, but a devise or bequest to an illegitimate child to be begotten seems void as against public policy.

It is unlawful in this State for white and negro persons to intermarry, and the issue of such marriages are regarded as illegitimate and incapable of inheriting any estate.

Bastardy proceedings may be instituted to require the reputed father to support and maintain a bastard child.

Support of Parents

The children of parents who are unable to support themselves are required to make provision for their support. Should they fail to do so, on information filed before a justice of the peace, the justice may issue an order making an assessment on the children for such amount as shall be necessary for the support of the parents.

Poor Women Having Dependent Children

The county commissioners of the several counties are authorized to levy a tax of not more than one mill on the taxable property in the county for the support of women upon whom children under the age of sixteen years are dependent for food, raiment and education. Cases of those applying are investigated as to their moral, physical and mental fitness for bringing up the children, and as to the necessity of the allowance to save the children from neglect. The allowance granted may not exceed twenty-five dollars for the first child and eight dollars a month for the additional children. Should the children aided fail to attend school for the whole term, the aid given ceases without notice.

Admission to University of Florida

Women may enroll in the University of Florida if they are at least twenty-one years of age, have had at least two years of college work and desire courses of study not offered at Florida State College for Women at Tallahassee.

Employment of Children

The employment of children is regulated by statutes prescribing the ages under which children may not be employed in certain occupations, specifying maximum hours of labor and imposing other regulations designed to improve working conditions of children.